

CENTRAL INFORMATION COMMISSION

Room No. 308, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi-110066

File No.CIC/LS/C/2009/000575

Indubala Agarwal Vs National Commodity & Derivatives Exchange Ltd

Dated : 8.2.2010

This is in continuation of this Commission's proceedings dated 1.1.2010. As scheduled, the matter is called for hearing today dated 22.1.2010. Complainant present. NCDEX is represented by Shri Ravinder Sachdev, Head, Legal Department. He would submit that NCDEX is registered as a public limited company under the Companies Act. It is not a Government company under the Companies Act. The accounts of the company are not audited by CAG and the auditing is done by the auditors appointed by the Board of NCDEX. Thus, it is his submission that it is not a public authority as defined u/s 2(h) of the RTI Act.

2. His further submission is that equity capital of LIC, NABARD, PNB & Canara Bank constitutes 46% of the total equity held by the company and these are public sector undertakings. NSE is not a public sector company which holds 15% equity of NCDEX. Similarly, IFFCO is also not a public sector company which holds 12% equity of NCDEX. Thus, even if it is held that NCDEX has been funded by the Central Government, the funding is only to the tune of 46% and, therefore, it can not be held that NCDEX is 'substantially financed' by the Central Government.

3. His further argument is that financing-direct and indirect-needs to be made by a Government, that is, Central or State or Union Territory, and not by public sector undertakings of these Governments, to bring it in the ambit of section 2 (h) of the RTI Act. He would forcefully plead that funding by the companies of Central Government or State Government is not the same thing as funding-direct or indirect-by the Governments per se.

4. Besides, he has also relied on the following decision of CIC in this regard :-

- (i) In File No. CIC/AT/C/2007/00091 dated 15.2.2008 (Manoj Kumar Kamra Vs IL&FS), the Commission has held that Infrastructure Listing and Financial Services Limited (IL&FS) is not a public authority as defined u/s 2(h).
- (ii) In File No. CIC/AT/A/2008/01024 and File No. CIC/AT/A/2009/00098 (R.J. Uttam Chandani Vs National Security Depositor Limited), it has been held that NSDL is not a public authority.

He would, thus, argue that the status of NCDEX is no different from that of IL&FS and NSDL and, therefore, it can not be held to be public authority and, therefore, is not liable to provide any information to the appellant.

5. On the other hand, Shri Anil Aggarwal appearing for the appellant, repudiates the contentions of Shri Sachdev and forcefully pleads that NCDEX is a public authority and, therefore, denial of information is contrary to the provisions of the RTI Act. His first and foremost submission is that NCDEX has been notified by the Central Government vide notification dated 20.11.2003 under the Forward Contracts (Regulation Act), 1952, and without such notification NCDEX could not have come into operation as a forward marketing operator. According to him, by virtue of this notification, NCDEX assumes the character of a public authority.

6. Besides, he also contests the claim of Shri Sachdeva that NSE & IFFCO are not public sector companies. According to him, both NSE & IFFCO are financed by Government of India and IFFCO is directed by the Ministry of Fertilizers and, therefore, the equity capital held by these companies amounts to financing of NCDEX. He has also disputed the contention of Shri Sachdev that equity participation by the public sector companies can not be held to be the same thing as financing by the appropriate Government. According to him, equity participation by the public sector companies amounts to indirect financing by the Government, as the Government money is channelised through these companies. Further, even if it is held that equity participation of PSUs is only 46%, this may be reasonably be interpreted to mean 'substantial financing' inasmuch as section 2 (h) does not mandate majority funding and it is open to the Commission to attribute a meaning to the expression 'substantially financed' used in this section.

7. A 'public authority' has been defined in section 2 (h) of the RTI Act, 2005. The relevant provision is extracted below :-

“(h) "public authority" means any authority or body or institution of self- government established or constituted—

- (a) by or under the Constitution;**
- (b) by any other law made by Parliament;**
- (c) by any other law made by State Legislature;**
- (d) by notification issued or order made by the appropriate Government,**

and includes any—

- (i) body owned, controlled or substantially financed;**
- (ii) non-Government organisation substantially financed,**

directly or indirectly by funds provided by the appropriate Government”

A bare reading of the above would indicate that even a private entity qualifies to be a 'public authority' if it is 'substantially

financed' directly or indirectly, by funds provided by the appropriate Government.

8. The pattern of equity capital of NCEDX has been indicated in para 06 of this Commission's proceedings dated 1.1.2010 which need not be repeated. It is undisputed that 46% of the total equity of NCEDX is held by LIC, NABARD, PNB and Canara Bank. These entities, no doubt, are public authorities. The question is whether equity capitalization by these entities can be said to be, direct or indirect, financing by the appropriate Government. This issue had come up for consideration before this Commission in File No CIC/AT/C/2007/00091 (Manoj Kumar Kamra Vs M/s IL & FS) wherein the Commission had held that despite the fact that the PSUs of the Govt. of India were holding 46% of the total share holding of IL&FS, it could not be designated as 'public authority'. Paras 17, 18 & 19 of the decision are extracted below :-

“17. A plain reading of this sub-section shows that the key element in the creation of public authority in all the 3 situations and the prime-mover in all three, is “appropriate government.” That is to say, unless it was proved – in respect of Section 2(h) (i) – that a commercial entity was owned, controlled or substantially financed by such “appropriate government”, such entity could not be called a public authority. The direct or the indirect presence of an appropriate government as the key component of the share-holding of such commercial entity and without the presence of an appropriate government it ceases to be a public authority.

18. It is common knowledge that government in its sovereign functions creates a number of public authorities to engage in commercial and even profitable business activities. Such entities are doubtless public authorities in terms of Section 2(h). But when such public authorities as part of their business activity create other commercial bodies or gain stakes therein, the latter would be missing a key element which the former had and that is direct or indirect involvement of an appropriate government. The respondents were entirely correct in pointing out that business activity of a public authority (which is not a appropriate government) even if it results in creation of or participation in another commercial body or entity, will not qualify the latter to be a public authority.

19. By the same logic, an NGO will qualify to be a public authority only if it receives direct or indirect financing from the appropriate government. There are several ways of ascertaining whether the finance received by an NGO is directly or indirectly from the government or it is not. But since the present appeal/complaint has not raised any such point, the Commission will not go into it.”

DECISION

9. In my opinion, the ratio of the above mentioned decision squarely applies to the present case. Despite the fact that 46% of the equity capital of NCEDX is held by the PSUs (which, no doubt, are public authorities), NCEDX can not be said to be 'public authority' as there has been no direct or indirect funding by an "appropriate Government". We, therefore, hold that NCEDX is not a public authority and is, therefore, not liable to provide any information to the appellant under the RTI Act. The appeal is, therefore, dismissed.

Order reserved and pronounced on 8th February, 2010.

Sd/-
(M.L. Sharma)
Central Information Commissioner

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(K.L. Das)
Assistant Registrar

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